

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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UNITED STATES OF AMERICA                      4:20-CR-00026-17

VS.    HOUSTON, TEXAS

GUSTAVO GARZA-AVALOS                      SEPTEMBER 10, 2024

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TRANSCRIPT OF REVOCATION AND SENTENCING HEARING PROCEEDINGS  
HEARD BEFORE THE HONORABLE LEE H. ROSENTHAL  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

FOR THE GOVERNMENT:                      MS. JENNIFER CHRISTINE STABE  
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FOR THE DEFENDANT:                      MS. LOURDES RODRIGUEZ  
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Official Court Reporter:                      Lanie M. Smith, CSR, RMR, CRR  
Official Court Reporter  
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Southern District of Texas  
515 Rusk  
Room 8004  
Houston, Texas 77002

Proceedings recorded by mechanical stenography,  
transcript produced via computer.

# PROCEEDINGS

THE COURT: All right. We're here on a sentencing for both the criminal case and the revocation.

MS. RODRIGUEZ: The attorney for the revocation is not here yet, Judge.

THE COURT: All right. Do you want to wait for him?  
I'm happy to do so.

MS. RODRIGUEZ: No, we don't need to. It's two separate --

THE COURT: All right. Go ahead and state your appearances then, please.

MS. STABE: Jennifer Stabe for the government.

MS. RODRIGUEZ: Lourdes Rodriguez for Mr. Garza-Avalos.

THE COURT: Very good. And is the interpreter here?

There you are.

The Court notes the presence of the interpreter. Thank you.

Ms. Rodriguez, have you and your client together gone over all of the presentence materials?

MS. RODRIGUEZ: I went to see him, Judge. I brought him information, case law about the questions that he has. He claims I didn't spend enough time with him.

I went to see him, I guess, last week and then Saturday and brought him a copy of the amendments for 2024.

They don't address either the importation or exportation and

1 they don't address the other questions that he had with the  
2 criminal history.

3 So I gave him the case law and the new amendments  
4 and I find that in this case for the ten years to count, they  
11:06AM 5 count backwards from the date the offense was committed and in  
6 his case it was December, not the date of the arrest and  
7 therefore, the probation was correct.

8 THE COURT: All right. You did also object to the way  
9 in which methamphetamine amounts are calculated.

11:07AM 10 MS. RODRIGUEZ: Yes.

11 THE COURT: Your objection is noted. It is overruled  
12 because the Sentencing Commission has provided the method that  
13 is used and that is the method that I will use.

14 Obviously considering the 3553(a) factors allows  
11:07AM 15 me to consider the appropriate sentence, even taking into  
16 account the amount of methamphetamine that is calculated as  
17 part of the defendant's relevant conduct.

18 So I know that you had asked, Ms. Rodriguez, for  
19 an offense level of 29 --

11:08AM 20 MS. RODRIGUEZ: Yes.

21 THE COURT: -- which would result -- if the criminal  
22 history was reduced on a variance to a five rather than a  
23 six --

24 MS. RODRIGUEZ: Correct.

11:08AM 25 THE COURT: -- that would result in a 210- to

1 262-month -- no, wait. Let me make sure I'm right on this.

2 If the offense level is a 29 and we are looking  
3 at a criminal history of five, then we are looking at a 140- to  
4 175-month range.

11:08AM

5 If we take the government's position and leave  
6 both the criminal history category and the offense level as is,  
7 then we're looking at 235 to 293 months.

11:09AM

8 I believe we may have covered this at the prior  
9 hearings, but I'm not going to impose a fine. There's no  
10 ability to pay.

11 Does the government ask me to remit the special  
12 assessment?

13 MS. STABE: We can, Your Honor. We can remit the  
14 special assessment.

11:09AM

15 THE COURT: All right. So ordered.

16 Thank you.

17 All right. At this time I'd like to hear from  
18 Mr. Garza-Avalos and from counsel.

11:09AM

19 I would note that the revocation that is also  
20 before me, the range here is 46 to 57 months.

21 THE INTERPRETER: I'm sorry, Your Honor?

22 THE COURT: 46 to 57 months.

23 MS. RODRIGUEZ: I will let the client talk first.

24 THE COURT: Go ahead, please, sir.

11:10AM

25 THE DEFENDANT: What I would like to say, Your Honor,

1 there are certain things that I do not agree with that are  
2 happening in my case.

3 In the first place, my attorney has not come to  
4 see me continually so that we can speak about the case. Of the  
11:10AM 5 time that I'm given, 30 days, she has only come once to see me.

6 And when I want to say something to her so that  
7 we can discuss this in front of me, she doesn't do it.

8 There are certain things here that I do not agree  
9 with. I can show you, please. For eight months, she didn't  
11:11AM 10 come to see me. She only came to see me last month. In those  
11 eight months, I could have covered all this.

12 And she has not reviewed my documents. I am  
13 forcing her to do this.

14 THE COURT: All right. Mr. Garza-Avalos --

11:11AM 15 THE DEFENDANT: Yes.

16 THE COURT: -- what is it that you want me to consider  
17 in imposing sentence?

18 THE DEFENDANT: This here.

19 May I pass this on to you, Your Honor?

11:11AM 20 THE COURT: Yes. (Reviewing.)

21 I do know your request for a continuance was  
22 granted, so we've taken care of that.

23 In addition, based on your attorney's capable  
24 arguments, I am, as a variance, reducing the criminal history  
11:12AM 25 category from a six to a five. That is obviously beneficial to

1 you because it reduces the sentencing exposure that you face.

2 Your attorney has also asked me to consider  
3 whether the guideline range that applies in your case should be  
4 reduced even below 210 months, which is the low end of the  
11:13AM 5 guidelines as it would currently be calculated. Your attorney  
6 would like me to go down far enough to result in a 140-month  
7 sentence at the low end.

8 So your attorney is doing a great deal to ask me  
9 to consider ways in which your sentence could be reduced below  
11:14AM 10 235 months, which is what the guideline range would call for.

11 So I have considered what your communications to  
12 your lawyer raise and I think that all of these points have  
13 been fully taken care of.

14 So to the extent you're asking me for yet another  
11:14AM 15 continuance, that's denied.

16 What else would you like to say, sir?

17 THE DEFENDANT: I have nothing else to say.

18 I would like to ask, Your Honor, have you  
19 received the letter that my daughter sent you?

11:15AM 20 MS. RODRIGUEZ: I think there was a docket entry,  
21 Your Honor.

22 THE COURT: What's the number?

23 MS. RODRIGUEZ: I don't know if I saw that. I know  
24 because I asked him -- it was not through me so I couldn't  
11:15AM 25 bring it to the Court.

1 THE COURT: Was it docketed?

2 MS. RODRIGUEZ: Pardon me?

3 THE COURT: Was it docketed?

4 MS. RODRIGUEZ: I don't know.

11:15AM 5 THE COURT: All right. Ms. Eddins will make sure that  
6 I have it before me.

7 MS. RODRIGUEZ: Okay.

8 THE COURT: Thank you. Is there anything else that you  
9 wanted to say, sir?

11:16AM 10 THE DEFENDANT: I find nothing else to say.

11 THE COURT: All right. Ms. Rodriguez, what would you  
12 like to say?

13 MS. RODRIGUEZ: Your Honor, I think we argued the last  
14 time when I requested 120 months based on the disparity of the  
11:16AM 15 sentencing amount in the circuits. I believe that my client,  
16 regardless of his insistence, has received the best possible in  
17 everything that we had done there.

18 Still, I think that a departure is proper in this  
19 case. I think the characteristics call for something less than  
11:16AM 20 what's required by the guidelines.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Government?

24 MS. STABE: Thank you, Your Honor.

11:16AM 25 You know, I understand that Mr. Garza-Avalos has

1 not been happy with the way that the PSR has turned out and I  
2 just want to make a couple of things clear for the record, that  
3 in this case I know that he was asking about the amendments,  
4 but the zero-point offender does not apply to him in this case  
5 because of his criminal history.

6 And, you know, the Court obviously, as you  
7 already ruled, is already taking into consideration the  
8 criminal history and reducing that from a six to a five, which  
9 lowers his possible range of punishment.

10 I know he also has some arguments about the plea  
11 agreement. And just kind of for the record, you know, it was  
12 myself, his previous defense attorney, case manager  
13 Shannon Jones and Judge Sheldon were all present when he signed  
14 the plea agreement.

15 And if there's any need for it, Mr. Mills, his  
16 previous defense attorney, is present outside the courtroom.  
17 But I think that the record speaks for itself that the plea  
18 agreement was signed freely and voluntarily in this case.

19 With regards to the revocation, I think that the  
20 evidence is clear because the allegation is that he committed a  
21 new law violation and the fact that we're here today for his  
22 sentencing and that he pled guilty proves that up as well. In  
23 that case, we would just be asking for the low end of the  
24 guideline range of 46 months for that revocation.

25 As far as his sentence in this case, our position



1 is that a guideline sentence of 210 months is appropriate.  
2 This defendant went to a location, he bought a kilogram of  
3 methamphetamine. He intended to use that.

4 The purity is in place for a reason. Buying  
11:18AM 5 1 kilogram of almost 100 percent pure methamphetamine is not  
6 the same as getting a mixture and substance of meth. It's much  
7 more dangerous, it's more deadly. It can be distributed into  
8 many more individual dosage units than a mixture and a  
9 substance and so our position is that is why these guideline  
11:19AM 10 ranges are what they are and are different from a mixture and  
11 substance.

12 And additionally, the reason the sentence, this  
13 guideline range is 210 to 262 months is because of the  
14 defendant's conduct. He has chosen to continue to commit  
11:19AM 15 offenses over and over and over again and that is why his  
16 criminal history category is so high.

17 He has been to federal prison before for a  
18 sentence of 40 months. He's had run-ins related to narcotics  
19 previously and he has multiple, multiple illegal reentries.

11:19AM 20 And so based on all of the factors in this case,  
21 we feel that the low end of the guidelines of 210 months is  
22 appropriate, Your Honor.

23 THE COURT: Do you want the 46 months to run  
24 concurrently or consecutively or a combination?

11:19AM 25 MS. STABE: Your Honor, we would be completely fine if

1 they ran concurrently.

2 MS. RODRIGUEZ: I'm sorry, Judge. Are you referring to  
3 the supervised release? Are you referring to the supervised  
4 release case?

11:20AM

5 THE COURT: No -- yes, I was referring to the  
6 revocation.

7 MS. RODRIGUEZ: Because I believe it cannot run  
8 concurrent, but it can be divided.

9 THE COURT: All right. Anything further?

11:20AM

10 MS. RODRIGUEZ: No.

11 THE COURT: I have read the letter from your daughter.  
12 It is obviously made part of this record. It's filed at Docket  
13 Number 881.

11:21AM

14 And just so our record is clear, I don't see any  
15 need or legal requirement for an evidentiary hearing on the  
16 presentence report and we have already resolved the counsel  
17 issue.

18 May I see probation for a moment, please.

19 (Off-the record discussion.)

11:22AM

20 THE COURT: The Court has had an opportunity to look at  
21 this case several times and to consider all of the arguments  
22 raised in light of the defendant's current conviction and his  
23 criminal history.

24 As noted, that criminal history is of concern.

11:22AM

25 The defendant has a strong association with trafficking not

1 only drugs but also weapons. He is being held accountable for  
2 close to a thousand grams of pure methamphetamine and that is  
3 appropriate given all of the circumstances disclosed by this  
4 record.

11:22AM

5 The government has asked me for essentially a  
6 210-month sentence and the defense has asked me to go  
7 significantly below that.

11:23AM

8 Here is the sentence that I think is as close as  
9 I can come to addressing the sentencing guideline objectives  
10 and the 3553(a) factors.

11 I think the defendant wants to say something  
12 more.

13 Go ahead, sir.

11:23AM

14 THE DEFENDANT: I want to say that I have nothing,  
15 nothing to do with a firearms charge.

16 THE COURT: Your offense of conviction is part of this  
17 record.

11:24AM

18 All right. The Court believes that an appropriate  
19 sentence in this case on the conviction that stands before me  
20 is 160 months; 46 months on the revocation. And of those  
21 46 months, 23 months are to run concurrently with the  
22 160 months and 23 months to run consecutively for a total time  
23 in prison of 183 months.

11:24AM

24 When you are released from prison, you will be  
25 placed on supervised release subject to any detainer for your

1 removal from this country.

2 Within 72 hours of your release from the custody  
3 of the Bureau of Prisons, you must report in person to the  
4 probation office in the district to which you are released.

11:25AM

5 While you are on supervised release, you must not  
6 commit any federal, state or local crime and you must comply  
7 with all the standard conditions adopted by this Court under  
8 General Order Number 2017-01, abide by any mandatory conditions  
9 required by law, and comply with the following additional

11:25AM

10 conditions:

11 You must immediately report, continue to report  
12 or surrender to U.S. Immigration and Customs Enforcement and  
13 follow all of their instructions and reporting requirements  
14 until any deportation proceedings are completed.

11:25AM

15 If you are ordered deported from the  
16 United States, you must remain outside the United States unless  
17 legally authorized to reenter. If you do reenter, you must  
18 report to the nearest probation office within 72 hours after  
19 you return.

11:25AM

20 You must seek proper documentation from the U.S.  
21 Immigration and Customs Enforcement authorizing you to work in  
22 the United States.

23 You must participate in an outpatient substance  
24 abuse treatment program and follow all the rules and

11:26AM

25 regulations of that program. The probation officer will

1 supervise your participation in the program, including the  
2 provider, the place, the type, how long it lasts and how  
3 intense it is. You must pay the costs of the program if  
4 financially able to do so.

11:26AM

5 You must submit to substance abuse testing to  
6 determine if you've used a prohibited substance. You must pay  
7 the costs of the testing if financially able. You may not  
8 attempt to possess or to obstruct or tamper with the testing  
9 methods.

11:26AM

10 You must not possess any controlled substances  
11 without a valid prescription and if you do have a valid  
12 prescription, you must follow the instructions on the  
13 prescription.

11:27AM

14 We've already dealt with the fine and with the  
15 special assessment.

16 Are there any requests that the defense has on a  
17 designation of a facility?

18 Ms. Rodriguez?

19 MS. RODRIGUEZ: Yes.

11:27AM

20 THE COURT: Any requests for a recommendation on what  
21 facility?

22 MS. RODRIGUEZ: I believe, Your Honor, his daughter is  
23 here in Houston, so anything close to Houston.

24 THE COURT: Okay. I'll recommend --

11:27AM

25 MS. RODRIGUEZ: He needs to be admonished of the right

1 to appeal.

2 THE COURT: I'll make a recommendation for designation  
3 to a facility close to Houston.

4 MS. RODRIGUEZ: Okay.

11:27AM

5 PROBATION OFFICER: Yes, Your Honor. And I apologize,  
6 but I missed the term of supervised release, the number of  
7 years that the Court placed him on.

8 THE COURT: Five years.

11:28AM

9 THE PROBATION OFFICER: Your Honor, if I may,  
10 Jarrod Shaw for the revocation matter in Case 2:15-cr-17.

11 To clarify for the record, the Court found that  
12 he violated both 1 and 2?

13 THE COURT: Yes. And supervised release is revoked if  
14 that's what you were looking for.

11:28AM

15 PROBATION OFFICER: And there will be no further  
16 supervised release?

17 THE COURT: None.

18 PROBATION OFFICER: Thank you, Your Honor.

19 THE COURT: Thank you.

11:28AM

20 Anything further?

21 (No response.)

22 THE COURT: You do have a right to appeal, sir. If you  
23 want to file an appeal, you must file your notice of intent to  
24 do so within 14 days from the date the judgment is entered. If  
25 you want a lawyer to represent you on an appeal and cannot

11:28AM

1 afford one, you may ask the Court to appoint one.

2 Do you understand those rights?

3 THE DEFENDANT: Yes.

4 THE COURT: Thank you very much.

11:28AM

5 MS. RODRIGUEZ: Thank you, Your Honor. May I be  
6 excused?

7 THE COURT: You may. Thank you.

8 MS. STABE: Thank you, Your Honor.

9 THE MARSHAL: All rise.

10 (The proceedings were adjourned.)

11 \* \* \* \*

12 REPORTER'S CERTIFICATE

13 I, Lanie M. Smith, CSR, RMR, CRR, Official  
14 Court Reporter, United States District Court, Southern District  
15 of Texas, do hereby certify that the foregoing is a true and  
16 correct transcript, to the best of my ability and  
understanding, from the record of the proceedings in the  
above-entitled and numbered matter.

17 /s/ Lanie M. Smith  
18 Official Court Reporter  
19  
20  
21  
22  
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